Martin Marietta Chemicals d/b/a Martin Marietta Refractories Company *and* United Cement, Lime, Gypsum and Allied Workers, International Union, Local No. 99, AFL-CIO, Union and United Steelworkers of America, AFL-CIO-CLC. Cases 8-UC-180 and 8-RM-876

21 May 1984

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 2 May 1983 the Regional Director for Region 8 issued a Decision and Order in the above-entitled consolidated proceedings in which he granted the Cement Workers' motions and dismissed both petitions. In dismissing the unit clarification petition, he found that employees historically represented by the Cement Workers at a facility newly purchased by the Employer (the south plant) did not constitute an accretion into the unit of employees represented by the Steelworkers at the Employer's older facility (the north plant). He further found that separate units remained appropriate. The Regional Director dismissed the RM petition on the ground that it was barred by each of the Unions' then existing collective-bargaining agreements. He declined to order a *Globe*-type election[1] because of the Cement Workers' indication that they would not participate in an overall election covering both facilities and the Steelworkers' indication that they would not participate in an election in a unit comprised of employees at the new facility. Thereafter, the Employer filed a timely request for review of the Regional Director's decision which was denied by telegraphic order of 23 August 1983. The Employer's timely filed motion for reconsideration was granted by the Board's telegraphic order of 19 October 1983, which also granted the Employer's request for review of the Regional Director's Decision and Order. The Cement Workers filed oppositions to the Employer's request for review and to the motion for reconsideration.

The Employer's position is that the south plant employees are an accretion to the unit of north plant employees represented by the Steelworkers. Alternatively, the Employer argues that its merger of the north and south plants constitutes a new operation creating a question concerning representation which should be resolved through an election, and that the sole appropriate unit is one overall unit of all production and maintenance employees.

The Cement Workers contends that a unit limited to south plant employees is appropriate and that this unit is not an accretion into the unit of north plant employees represented by Steelworkers. The Cement Workers argues that the Employer is obligated to bargain with it over the terms and conditions of employment of the south plant employees. The Cement Workers argues also that the processing of the RM petition is barred by either or both of the collective-bargaining agreements pertaining to each of the units. Finally, the Cement Workers contends that the Board should defer this matter to an article XX proceeding under the AFL-CIO constitution.

Steelworkers took no position on the merit of either petition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case and finds that a question concerning representation exists with respect to the Employer's production and maintenance employees.

The record shows that prior to 29 January 1982 the Employer operated one facility in Woodville, Ohio (north plant), where it quarried and manufactured lime products. Steelworkers has represented production and maintenance employees at the north plant since 1945. Immediately adjacent to the north plant, another employer, Woodville Lime and Chemical Company, also operated a facility (the south plant) where it quarried and manufactured lime products. The Cement Workers has represented production and maintenance employees at the south plant since 1938. The most recent collective-bargaining agreements for both units were effective until 31 May 1983. On 29 January 1982 the Employer acquired the south plant and hired the employees formerly employed by Woodville Lime. At that time there were approximately 93 unit employees at the south plant, 18 of whom were on layoff, and 159 unit employees at the north plant, 14 of whom were on layoff. The Employer notified all employees of its intent to consolidate both operations into one combined unit. The Employer then brought both plants under one central administration, appointing one general manager to oversee overall operations at the combined facility. Also, there is one overall personnel manager, one safety engineer, and one traffic manager who handles the shipment of all products at both plants. Personnel Director Rembold has overall responsibility for the labor relations of the combined facility in addition to five other facilities in the refractory division.

After the acquisition, the Employer physically joined the previously separate quarries at each of

[1] *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

the plants. At the time of the hearing, the stone separating the quarries had been blasted through, and the Employer was constructing a ramp to permit the free access of employees and mobile equipment between the two quarries.

When the Employer acquired the south plant and hired the employees, it applied to them the terms and conditions of employment set forth in its collective-bargaining agreement with the Steelworkers for the unit at the north plant. The Employer subsequently dovetailed the seniority lists of the two plants, and north plant employees bumped into south plant positions and vice versa during the 1982 layoffs. Steelworkers has been representing the south plant employees and has processed their grievances pursuant to its collective-bargaining agreement. Steelworkers asserts it is willing to represent these employees if the Board should find they accreted to the unit of north plant employees. Steelworkers further asserts that it will not participate in an election for a unit of only the south plant employees.

Since the acquisition, most south plant employees have remained working at the south plant; however, approximately 20 to 25 percent of them are assigned daily to the north plant. The Regional Director found that there were about 50,000 hours of employee interchange between the north and south plant during the period spanning 1 February 1982 through 1 January 1983. The Employer contends that employee interchange increased significantly in May 1982 and averages 6200 hours per month for a projected annual rate of about 75,000 hours per year. Generally, employees at both plants perform similar functions with similar skills and similar equipment to quarry and produce limestone and limestone products.[2]

In these circumstances, we agree with the Employer's contention that it has created a new operation consolidating two previously separate units of employees. The new operation is physically consolidated, it is under common management and administration, and there is centralized control of labor relations and interchange of employees. These changed circumstances have obliterated the previous separate identities of the two units which existed when each group worked for different employers at two distinct facilities. Now, both groups of employees are employed by the same employer performing similar functions under common terms and conditions of employment. We accordingly find that one overall unit of all production and maintenance employees employed at the combined facility is now the sole appropriate unit.[3]

When an employer merges two groups of employees who have been historically represented by different unions, a question concerning representation arises, and the Board will not impose a union by applying its accretion policy where neither group of employees is sufficiently predominant to remove the question concerning overall representation. *Boston Gas Co.*, 221 NLRB 628 (1978). We find this to be the case here and thus, even if either of the Unions' collective-bargaining agreements remained in effect, it would not bar an election. *Massachusetts Electric Co.*, 248 NLRB 155 (1980).

In view of the foregoing, we hereby dismiss the petition in Case 8–UC–180, and we shall direct an election in the unit found appropriate. Those eligible shall vote whether they desire to be represented for collective-bargaining purposes by United Steelworkers of America, AFL–CIO–CLC; United Cement, Lime, Gypsum and Allied Workers, International Union, Local No. 99, AFL–CIO, or neither.[4]

On the entire record in this proceeding, the Board finds

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The appropriate unit is:

> All production and maintenance employees employed by the Employer at its Woodville, Ohio facility.

[Direction of Election omitted from publication.]

[2] We disagree with the Regional Director that the north plant produces lower grade stone and that each plant produces a separate, identifiable product. Thus, Production Superintendent Charles Hoban testified that the north and south plants produce BOF grade lime and that the lime produced at the south plant is not distinguishable from that produced at the north plant.

[3] We agree with the Regional Director that it is inappropriate to defer this matter to an art. XX proceeding under the AFL–CIO constitution. *Hershey Foods Corp.*, 208 NLRB 452 (1974); *Magna Corp.*, 261 NLRB 104 (1982).

[4] If any union currently designated on the ballot does not wish to represent employees in the unit found appropriate, it shall so notify the Regional Director and its name shall be removed from the ballot.